MAUREEN CARR

IBLA 82-1049 Decided September 21, 1982

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 52798 through CA MC 52800.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Assessment Work

   The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), that evidence of assessment work or notice of intention to hold mining claims be filed where the notice of location of the claim is recorded and in the proper office of BLM is mandatory, not discretionary. Filing of evidence of assessment work only in the county does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

   The mailing of a proof of labor to BLM prior to the due date is not sufficient to comply with the requirements of the statute unless the proof is actually received by the proper BLM office on or before such date.

APPEARANCES: Maureen Carr, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Maureen Carr 1/ appeals the June 24, 1982, decision of the California State Office, Bureau of Land Management (BLM), which declared the unpatented Gold Greenback #1, #2, and #4 lode mining claims, CA MC 52798 through CA MC 52800, abandoned and void because no proof of labor was filed with BLM on or before December 30, 1981, as required by section 314 of the Federal Land Policy and Management of 1976 (FLMPA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1. The 1981 proof of labor was received December 31, 1981. It had been filed in San Bernardino County on September 30, 1981.

Appellant states the proof of labor was mailed on December 19, 1981, from Upland, California, and should have been received by BLM in Sacramento in less than 11 days. Because the claims have been overstaked by others, she cannot relocate the claims which have been held by her family for more than 40 years, during which time all the requirements of the mining laws have been complied with, including the recordation requirements of FLPMA.

[1] Section 314 of FLPMA requires the owner of an unpatented mining claim to file a copy of the evidence of assessment work performed on the claim or a notice of intention to hold the claim prior to December 31 of each calendar year both in the county where the location notice is recorded and with BLM. The statute also provides that failure to file such instruments within the time period prescribed shall be deemed conclusively to constitute an abandonment of the claim by the owner. 43 U.S.C. § 1744(c) (1976). The statutory requirements are replicated in 43 CFR 3833.2 and 3833.4(a). The requirement to file both in the county and with BLM are mandatory, not discretionary. Compliance with the one does not constitute compliance with the other. Enterprise Mines, Inc., 58 IBLA 372 (1981). Failure to comply timely is deemed to constitute an abandonment of the claim by the owners and renders the claim void. Fahey Group Mines, Inc., 58 IBLA 88 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). Congress imposed that consequence in enacting FLPMA. The responsibility for complying with the timely recordation requirements of FLPMA rests with appellant. This Board has no authority to excuse failure to comply with the statutory requirements of recordation or to afford any relief from the statutory consequences. Lynn Keith, supra.

[2] The mailing of the evidence of assessment work prior to the due date is not sufficient to comply with the requirements of the statute unless the document is actually received by the proper BLM office on or before the due date. The Board has repeatedly held that a mining claimant, having chosen the means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filing. Prudential Mining & Exploration, Inc., 60 IBLA 363 (1981); Everett Yount, 46 IBLA 74 (1980). Filing is accomplished only when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

1/ The record shows the claims are owned by Maureen Carr, Jack Moore, Sr., and Jack Moore, Jr.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

ADMINISTRATIVE JUDGE IRWIN CONCURRING:

Lest appellant think we are merely remorseless robots rotely relying on rigid regulations, let me add that we sympathize with her situation.

I could well believe that she mailed the proof of labor with her Christmas cards on December 19 and that, as the Postal Service supervisor she reported talking with suggested, it languished in the bottom of a sack of mail being transferred from Upland to Industry, California, until it was found and postmarked 10 days later. I would also add that it troubles me that the BLM State Office waited nearly 6 months to inform her that her claim had been declared void, thus markedly increasing the chances that conflicting claims would make relocating it impossible.

These are both unfortunate circumstances, but the law is clearly as my colleagues have stated it and we are bound by it. For appellant's information, if not her solace, the policy reasons for its enactment by the Congress were stated in the Senate report accompanying the bill:

RECORDATION OF MINING CLAIMS

> Section 311. One of the most persistent and significant roadblocks to effective planning and management of most Federal lands, including the national resource lands, is the status of hardrock mining and mining claims on those lands under the Mining Law of 1872, as amended (30 USC 22-47). The status accorded mining and its implications for the public land planner were recently outlined as follows:
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> > The prime concern of public land managers is that mining is given a preferential status on almost all the public lands under the present law. Under the policy of "free mining" a prospector is unrestricted as long as he is diligently exploring for mineral deposits, without regard to the impact which his activity may have on other uses of the land. . . . This situation has obviously compromised the ability of public land managers to develop and administer a comprehensive plan which provides, in an even and balanced way, for all uses of the public lands. Mining lies outside this process. Because mining tends to dominate other uses whenever and wherever it occurs, the land management policies implemented by the agencies are continually subject to displacement by a mineral claimant. <20>

<20>W. Condon and D. Jackman, "Reforming the Mining Laws--The Case For A Leasing System", Public Land Management--A Time For Change?, Stanford, California (1971), p. 8.

Virtually all interested parties, including the Members of Congress, the mining community, the PLLRC, the Administration, environmental organizations, and others, have proposed changes in the Mining Law of 1872, as amended, to alter, or mitigate the adverse impacts resulting from, the present position of hardrock mining on the public lands. The Committee expects to initiate the legislative process with hearings early next year on the various legislative proposals to alter the 1872 Mining Law.

Although the Committee considered such proposals to be beyond the scope of S. 507, as ordered reported, the Committee did address a particular procedural problem concerning the registration of mining claims--a problem which is particularly frustrating to the public land manager. The source of this problem is what is often termed "stale claims". There is no provision in the 1872 Mining Law, as amended, requiring notice to the Federal government by a mining claimant of the location of his claim. The mining law only requires compliance with local recording requirements, which usually means simply an entry in the general county land records. Consequently, Federal land managers do not have an easy way of discovering which Federal lands are subject to either valid or invalid mining claim locations. According to some estimates, there are presently more than 6,000,000 unpatented claims on the public lands, excluding national forests, and more than half of the units of the National Forest System are reputedly covered by mining claims. <21> Of course, the vast majority of these claims will never be pursued, and do not directly interfere with land management. They do, however, create significant uncertainty regarding the actual extent of valid locations. Furthermore, as unpatented mining locations can be bought and sold, they have become the basis for many unauthorized occupancies on the public lands. These claims constitute a cloud on the title of a large portion of the Federal lands.

Subsection (a) would establish the recording system so necessary for Federal land planners and managers. It would require that all mining claims under the 1872 Mining Law, as amended, be recorded by the claimants with the Secretary within two years after the enactment of S. 507, as ordered reported, or within 30 days of the location of the claim, whichever is later. Any claim not recorded is to be conclusively presumed abandoned and will be void.

This recording requirement is not intended to supersede nor displace the existing recording requirements under State law. As such, its purpose is to advise the Federal land managing agency, as proprietor, of the existence of mining claims. The agency is not intended to be the official recording office for all ancillary documents (i.e. wills, mechanic's liens, conveyances, tax liens, court judgments, etc.). The county public records would

remain, as before, the official repository of such recorded documents. [Footnote 21 omitted.]

S. Rep. 94-583, 94th Cong., 1st Sess. (1975), at 64-65.

I concur.

Will A. Irwin
Administrative Judge